IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 30082 of 2004(F)

PETITIONER:

1. M.BALAKRISHNA, "SOULABHYA",
   S.V.COLONY ROAD, CALICUT-6.

2. O.P.PRABHAKARAN NAIR, "SHRUTHI",
   P.O.KAVIL, NADUVANNUR, KOZHIKODE DISTRICT.

3. P.E.SANKARANARAYANAN, "NENMINI",
   NALLUR, P.O.FEROKE, KOZHIKODE DISTRICT.

4. M.K.SREENIVASAN, 19/1980, 'SREE LAKSHMI"
   P.O.CHALAPURAM, CALICUT 673 002.

5. C.UDAYAVARMAN UNNI,
   "SREEHARI", P.O.KOTTAPPURAM, SREEKRISHNAPURAM,
   PALAKKAD DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY ITS
   SECRETARY, DEPARTMENT OF CO-OPERATION,
   THIRUVANANTHAPURAM.

2. THE KOZHIKODE DISTRICT CO-OPERATIVE BANK
   EMPLOYEES WELFARE FUND, REPRESENTED BY ITS
   SECRETARY, KOZHIKODE.

3. THE KOZHIKODE DISTRICT CO-OP.BANK LTD.,
   REPRESENTED BY ITS GENERAL MANAGER, KOZHIKODE.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SMT.UMA GOPINATH
SRI.SANDEEP.E.
SRI.DEVIDAS.U.K
GOVERNMENT PLEADER SHRI.RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007, ALONG WITH WPC NO. 402 OF 2005 WPC NO. 33511 OF 2004 THE COURT ON 28.3.2007 DELIVERED THE FOLLOWING:

W.P(C).No. 30082/2004

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE COMMON JUDGMENT IN O.P.NO.11104/98 AND CONNECTED CASES OF THIS COURT.

P2. COPY OF THE JUDGMENT DTD.28.7.04 IN CIVIL APPEAL NOS.6343 - 6345 OF 2003 ISSUED BY THE SUPREME COURT.

P3. COPY OF THE NOTICE DTD.20.9.04 ISSUED BY R2.

P4. COPY OF THE FORM OF RECEIPT ISSUED BY R2

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).Nos.30082/2004, 33511/2004
and 402/2005

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Dated this the 28th day of March, 2007

J U D G M E N T

In all these cases the issue involved is identical and therefore the same are being disposed of by this common judgment.

The petitioners in all these writ petitions are employees of the Kozhikode District Co-operative Bank Ltd., (the 3rd respondent in all the writ petitions) who retired from service prior to 10.6.1997. The 1st respondent State of Kerala framed "Rules for the Kerala State Co-operative Bank Employees Welfare Scheme and the District Co-operative Bank Employees Welfare Scheme", for regulating payment of retirement benefits to employees of State Co-operative Banks and District Co-operative Banks. This scheme was approved on 21.3.1991. As per the Scheme, the Banks were to

constitute a welfare fund to which amounts were paid and credited by the employee and the Bank in certain proportions. From this fund, amounts were to be paid to the employees who retire from service or leave the service on certain contingencies, as per a formula prescribed by the Scheme. By G.O(Ms). 133/98/Co-op./TVM dated 24.8.1998 the Government amended the scheme with retrospective effect from 10.6.1997, as a result of which the benefits due to the employees under the scheme were reduced. Some employees challenged the retrospectivity given to the amendment, in O.P.No.11104/1998 and connected cases, which found favour with a Single Judge by Ext.P1 judgment. This was challenged in appeal before the Division Bench in *Malappuram Dt. Co-op. Bank Ltd., v. Malappuram Dt. Co-op. Bank Employees W.F.Committee* reported in 2001(2) KLT 44, in which the retrospectivity given to the amendment was upheld. The appeals before the Supreme Court were disposed of by Ext.P2 judgment with certain clarifications, which have no bearing on the issue

involved in these writ petitions, since all the courts uniformly upheld the right of the employees who retired prior to 10.6.1997, to get benefits as per the unamended scheme. The learned Single Judge, in Ext.P1 judgment directed the 2nd respondent-Kozhikode District Co-operative Bank Employees Welfare Fund to pay to those employees who retired prior to 10.6.1997 the benefits due to them as per the unamended scheme with 12% interest from the date of their retirement before 10.6.1997 till payment. As far as the persons who retired before 10.6.1997 the Division Bench and the Supreme Court did not interfere with the direction in Ext.P1 judgment. However, the Welfare Fund Committee managing the Fund intimated each petitioner that a certain amount is due to the respective petitioner and directing him to receive the amount by signing and submitting the receipt for the said amount, enclosed with the intimation. The intimation received by one of the employees is Ext.P3 and the form of receipt is Ext.P4. The petitioners received

the same after signing and submitting the receipt. However, the amount so paid did not include the 12% interest directed to be paid as per Ext.P1 judgment, which was confirmed by the Division Bench and the Supreme Court in respect of employees who retired prior to 10.6.1997. These writ petitions are filed for a direction to the 2nd respondent to pay interest at 12% directed to be paid as per Ext.P1 judgment, notwithstanding Ext.P4 receipt which purported to state that such payment was in full and final settlement of the welfare fund dues payable to the employee and in full satisfaction of all his claims as per the judgment of the learned Single Judge, Division Bench and the Supreme Court.

2. The respondents 2 and 3, with the help of the counter affidavit filed by them, oppose the claim on three grounds. The first is that since in Ext.P2 judgment of the Supreme Court there is no direction to pay interest, the petitioners are not entitled to any interest. The 2nd is that since

receipt like Ext.P4 has been issued by all the petitioners accepting the amounts offered to them in full and final settlement of all their claims under Ext.P1 judgment, they cannot now turn around and claim interest also. Thirdly, they contend that no writ petition would lie for a claim for interest alone and the remedy of the petitioners lies in filing a suit for that relief.

3. I have considered the rival contentions in detail.

4. In Ext.P1 judgment, the claim of the employees who retired prior to 10.6.1997 was dealt with and decided in paragraph 7 which reads thus:

> "7. With regard to the payment of benefits payable to the employees before 10.6.1997 who became members on the basis of Ext.R2(a) rules are entitled to get retirement benefits as per Ext.R2(a) before its amendment. There cannot be any dispute over this proposition because the banks accepted the scheme and paid their contribution. Employees also joined the scheme and paid their share of contribution. The fund was bound to pay the amount. Even if they have got no fund, they have to get money by way of loans from banks and pay the amount. Presidents and Vice-Presidents of the Banks are the Presidents and Vice-Presidents of the Fund also. Further, General Manager of the bank is the Secretary-Treasurer of the Fund. They did not challenge the rules and acted upon the rules. Employees also have paid their contributions and in most of the banks, complete payments were made

to those employees who are retired before 10.6.1997. Therefore, I am of the view that those who have retired prior to 10.6.1997 are entitled to the retirement benefits till 10.6.197 and if the Fund has not paid the amount due as per Ext.R2(a) Fund should pay the amount with 12% interest from the date of their respective retirement before 10.6.1997 till its payment."

5. The Division Bench dealt with the case of the same set of employees in the judgment reported in 2001 (2) KLT 44 thus in paragraph 3 and 14 thus:

"3. ..... Learned Single Judge held that with regard to payment of benefits payable to an employee before 10.6.1997, who became members as per Ext.R2(a) rules they are entitled to get retirement benefit as per the unamended rules. There cannot be any dispute over this proposition because, the bank accepted the scheme and paid their contribution. Employees also joined the scheme and paid their share of contribution. The Fund was bound to pay the amount. Even if they have no fund, they have to get money by way of loans from bankers and pay the amount. Thus the learned Single Judge found that those who have retired prior to 10.6.1997 are entitled to get the retirement benefits as per the original Rules.....

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14. ....Hence, we are of the view that whose who have retired prior to 10.6.1997 will be entitled to the benefit of the unamended rule."

6. In Ext.P2 judgment the Supreme Court considered the matter as follows:

"The first category of parties i.e. those who retired before 10th June, 1997 are not affected by aforesaid amendments. It cannot be disputed that the unamended rules would be applicable to them. They are, therefore, to be paid the amount as worked out as per the formula under the unamended Rules.

> This Court, by order dated 21st January 2002, directed that the employees who have retired be paid the admitted due amount within six weeks. There is no dispute as to the amount payable to the first category of parties who have retired before 10th June 1997 as their dues are to be calculated in terms of the unamended Rules. It seems that the order dated 21st January 2002 has not been complied with and full admitted amount has not been paid to them.
>
> Under the aforesaid circumstances when there is no dispute about the liability or the amount to be paid in respect of the first category of parties, it is wholly unnecessary to go into any other aspect in the appeals to which they are parties. The appeals in respect of this category of parties are disposed of with directions that the payments of the remaining amount shall be made to them within two months."

7. In the decisions of the Division Bench and the Supreme Court, although there is no reference to interest, it is clear that the Division Bench and the Supreme Court did not interfere with the judgment of the learned Single Judge. The Division Bench and the Supreme Court only dealt with the legal question as to the entitlement of the employees who retired prior to 10.6.1997 for benefits under the unamended scheme and left it at that. Therefore, the relief portion in Ext.P1 judgment in respect of those employees remains untouched and I am of the opinion that respondents

2 and 3 are liable to give effect to the same in letter and spirit, which would naturally include interest also. Therefore, I repel the first contention of respondents 2 and 3.

8. The 2nd contention is based on Ext.P4 receipt to the effect that the liability of respondents 2 and 3 under Ext.P1 stands discharged on the petitioners' submitting receipts in Ext.P4 form. This contention has to be assessed in the background of the long drawn out litigation between the parties from the Single Bench of this court up to the Supreme Court over a period of over 6 years. The petitioners who were retired employees were fighting their case all throughout with whatever little resources they had and they must have come to a stage when they would accept whatever is offered to them after the long drawn out fight between unequals. Therefore, Ext.P4 cannot be accepted as a contract between the parties with consensus *ad idem* which is a *sine qua non* for a valid contract. This is clear from the way the 2nd

respondent has gone about doing it. The tenor of Ext.P3 and the intention therein is more than transparent to the effect that unless the employee signs Ext.P4 receipt, the amount stated in Ext.P3 would not be paid. There is no mention therein that the amount shown in Ext.P3 does not include interest granted as per Ext.P1 judgment. The wording in Exts.P3 and P4 abundantly makes it clear that the 2nd respondent has done it deliberately with the knowledge that they are liable to pay interest also and they wanted to deny the same to the employees by coercing them to accept the amount offered to them. The poor employees who were at the end of their tether had no choice but to accept the same by signing over the dotted line. I do not think that such a discharge of liability is valid in law so as to bind the petitioners.

9. I derive support for my view from the decision of the Supreme Court in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath,* AIR 1988 SC 1571. In paragraph 90 of the decision, the

Supreme Court has held thus:

> "90. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art.14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in an contract, entered into between parties who are not equal in bargaining power. It is difficult to get an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances; whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or

> rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myraid situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court just judge each case on its own facts and circumstances."

10. I am fully satisfied that Ext.P4 is an unconscionable contract as envisaged in the above decision of the Supreme Court because of the great disparity between the two contracting parties in this case. In this respect it may also be noted that the petitioners had approached this court immediately after receipt of the amount, which also would go to show that they did not sign the receipts voluntarily but were forced to do so because of their dire necessity for money for survival, without any intention to voluntarily forego the interest granted by Ext.P1. That being so, I am inclined to hold that respondents 2 and 3 cannot deny the benefit of interest on the amounts

due to the petitioners as granted in Ext.P1 judgment. I do so.

11. In support of their last contention, respondents 2 and 3 rely on a decision of a Single Judge of this court in *Vijayakumaran Nair v. State Bank of Travancore*, (2005 [1] KLT 953) in which a learned Judge of this Court held that a petition under Art. 226 seeking the sole relief of interest for alleged delayed payment need not be entertained and the proper remedy is to approach the civil court. I do not think that the said decision has any application to the facts of this case. Here the right of the petitioner for interest has already been adjudicated upon in favour of the petitioner by Ext.P1 judgment. All what they seek is implementation of the direction to pay interest @ 12% to them on the amounts which were due to them as directed in Ext.P1 judgment. As such, there is no merit in that contention also of respondents 2 and 3.

12. The result of the above discussion is

that respondents 2 and 3 are liable to pay interest also on the amounts paid to the petitioners as per Ext.P1 judgment as confirmed by the Supreme Court.

Accordingly, I direct respondents 2 and 3 to pay to the petitioners in these writ petitions interest on the amounts due and paid to them in accordance with those judgments ie. @ 12% from the date of retirement till date of payment. This shall be paid within 2 months from the date of receipt of a copy of this judgment.

It is brought to my notice by the counsel for the petitioners in W.P(C).No.33511/2004 that the writ petition is filed by the legal heirs of the retired employee. As such, the direction as above would be applicable to the petitioners in that writ petition as legal heirs of the deceased employee.

The writ petitions are allowed as above, but without any order as to costs.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge.